IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6351 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHREE CORPORATION PARTNERSHIP FIRM

Versus

ZAVERI & CO EXPORTS

Appearance:

MR NITIN M AMIN for Petitioners

RULE SERVED for Respondent No. 1

MR HL JANI Learned APP for Respondent No. 2

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 08/03/2001

ORAL JUDGEMENT

Heard Mr. Nitin Amin learned advocate for the petitioners and Mr. H.L.Jani learned APP for respondent

no.2 State. The respondent no.1 is absent though duly served.

2. The petitioners have prayed to quash and set aside the proceedings of Criminal Case No. 4311 of 1997 filed by respondent no.1 in the Court of learned Metropolitan Magistrate, Ahmedabad, Court No.9 and also to quash the process issued in the said proceedings against the present petitioners.

3. The certified copy of the complaint filed by respondent no.1 in the Court of learned Metropolitan Magistrate, Ahmedabad, Court No.9 is produced at Annexure-A from which it appears that respondent no.1 has filed the complaint against the present petitioners under Section 138 of the Negotiable Instrument Act,1981 (for short "the Act") on the facts that petitioner no.1 has issued cheque bearing no. 406070 dated 22.4.1997 for an amount of Rs. 10 lacs (Rupees Ten lacs only) on bank account no. 90630 with the Bank of Baroda, Gandhi Road Branch, Ahmedabad, towards the payment of goods sold and supplied to the present petitioners by respondent no.1 and on due date, the said cheque when presented for encashment it has returned dishonoured with the endorsement of "insufficient funds". In para.9 of the complaint, it is averred and contended that respondent no.1 as a complainant, had served a notice by RPAD to the accused (present petitioners) dated 17.7.1997, copy of which is produced in the complaint. It is further averred and contended in the complaint that despite lapse of 15 days from the service of the demand notice as accused failed to comply with the demand, complaint has been filed.

4. It appears from the record that learned Metropolitan Magistrate, Ahmedabad, Court No.9 after recording verification issued process against the present petitioners vide order dated 30.8.1997.

5. The petitioners have challenged the validity of the said complaint on numerous grounds. However, it has been contended at bar that impugned complaint is filed by respondent no.1 for the dishonour of cheque bearing no. 406070 dated 22.4.1997 drawn by the petitioners on Bank of Baroda, Gandhi Road Branch, Ahmedabad from the Account No. 90630. That the certified copy of the cheque suggests that payee is respondent no.1 - M/s. Zaveri & Co. Exports. Further, the demand notice as per the requirement of the Act served to the petitioners, copy of which is produced at Annexure-C, suggests that notice has been issued by learned advocate Mr. K.V.Shelat under the

instructions of his client M/s. Zaveri & Co. of Swagat, C.G.Road, Ahmedabad. Mr. Nitin Amin learned advocate for the petitioners has pointed out that Zaveri & Co. and M/s. Zaveri and Co. Exports, are two different firms having different partners. The certified extracts of Register of Firm of Zaveri & Co. as well as M/s. Zaveri & Co. Exports; are produced on record vide Annexure-D at pages 16 and 17 respectively. In view of the said fact, notice purported to have been served by respondent no.1 as averred in para.9 of the complaint, cannot be said to be a legal notice as required by the statute because the same is issued by Zaveri & Co. who is not the payee of the dishonoured cheque. Thus, in the absence of condition precedent stipulated under Section 138 (c) having not been complied with the complaint as filed is bad in law.

6. It is pertinent to note that despite due service, the respondent no.1 has failed to appear and in the absence of affidvit-in-reply to controvert above stated fact, it has to be concluded that complaint filed by M/s. Zaveri & Co. Exports is filed without statutory notice as contemplated under Section 138 (c) of the Act and thereby, the complaint as filed is not tenable at law.

7. On the basis of foregoing discussion, petition is allowed. The impugned complaint being Criminal Case No. 4311 of 1997 filed by respondent no.1 against the present petitioners along with process issued by the Trial Court - learned Metropolitan Magistrate, Ahmedabad, Court no.9 is hereby quashed and set aside. Rule to that extent is made absolute.

(A.K.Trivedi,J.)

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